

STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH¹
BOARD OF RESIDENTIAL BUILDERS AND
MAINTENANCE & ALTERATION CONTRACTORS

DEPARTMENT OF ENERGY, LABOR &
ECONOMIC GROWTH,
BUREAU OF COMMERCIAL SERVICES

Docket No. 2008-1554
Complaint No. 308814

Complainant,

v

GILBERT BUILDING COMPANY
ARNOLD H. GILBERT, QUALIFYING OFFICER
License No. 21-02-128342

Respondent.

FINAL ORDER

WHEREAS, this matter having come before the Michigan State Board of Residential Builders and Maintenance & Alteration Contractors, hereafter the "Board", on May 5, 2009;

WHEREAS, the Board having received a Hearing Report under MCL 339.514 for this case and the Board having considered the Findings of Fact and Conclusions of Law in the Hearing Report of David Cohen, Administrative Law Judge, dated February 20, 2009;

WHEREAS, the hearing report is hereby incorporated by reference;

WHEREAS, the Respondent having been found in violation of the Michigan Occupational Code, PA 299 of 1980, hereafter the "Code," or rules promulgated there under, and the Board having elected to exercise its authority pursuant to MCL 339.514 to impose penalties different from those recommended by the Administrative Law Judge; now, therefore,

IT IS ORDERED, that the following penalties authorized by Section 602 of the Code are imposed:

1. Respondent shall pay a FINE in the amount of \$5,000.00. The fine is payable to the State of Michigan within 60 days from the mailing date of this Final Order. Complaint No. 308814 must be clearly indicated on the check or money order, and the payment sent to the Department of Energy, Labor & Economic Growth, Bureau of Commercial Services, Final Order Monitoring, P.O. Box 30018, Lansing, Michigan 48909.

¹ Effective December 28, 2008, by Executive Order 2008-20, the Department of Labor & Economic Growth (DLEG) was reorganized and renamed as the Department of Energy, Labor & Economic Growth (DELEG).

2. Respondent shall make RESTITUTION within 60 days to the Homeowner Construction Lien Recovery Fund in the amount of \$4,000.00 and \$1,312.50 in litigation costs, fees and interest at the statutory rate from August 29, 2007, payable to the Homeowner Construction Lien Recovery Fund and mailed to Department of Energy, Labor & Economic Growth, Final Order Monitoring, P.O. Box 30018, Lansing, MI 48909 within 60 days from the mailing date of the Final Order.

3. The license of Respondent and any and all Article 24 licenses held by Respondent and Respondent's Qualifying Officer shall be and hereby are IMMEDIATELY REVOKED. No application for licensure, relicensure, reinstatement or renewal shall be considered or granted by the Department until all Final Orders of the Board have been fully complied with. Respondent's Qualifying Officer may not serve as the Qualifying Officer of any licensed corporate entity while any other Article 24 license held by Respondent is in suspended or revoked status.

4. It is the intent of the Board that the fine and restitution be assessed one time in order to satisfy Final Orders issued for complaint Numbers 308814 and 308816. Once the fine and restitution ordered in one of the companion Final Orders is satisfied, the fine and restitution ordered in the other Final Order will be considered satisfied.

5. Respondent shall submit in writing to the Michigan Department of Energy, Labor & Economic Growth, Bureau of Commercial Services, Final Order Monitoring, P.O. Box 30018, Lansing, Michigan 48909, proof of compliance with each and every requirement of this Final Order, in a form acceptable to the Department.

This Final Order shall not be construed as limiting the Department of Energy, Labor & Economic Growth, any other agency of the State of Michigan, or any individual as to the use of a lawful method of collection of the payment imposed by this Final Order.

Failure to comply with the provisions of this Final Order is considered a violation of the Code pursuant to Section 604(k) and may result in further disciplinary action.

This Final Order is effective immediately upon its mailing.

Given under my hand at Okemos, Michigan, this 22 day of July, 2009.

BY: [Signature]
Mark T. Glynn, Chairperson

Date mailed: July 22 2009

Proof of Compliance should be filed with:

Department of Energy, Labor & Economic Growth, Bureau of Commercial Services
Final Order Monitoring
P.O. Box 30018
Lansing, MI 48909

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES**

In the matter of	Docket No.	2008-1553
Bureau of Commercial Services, Petitioner	Agency No.	308816
v	Agency:	Bureau of Commercial Services
Arnold H. Gilbert, Respondent	Case Type:	Sanction
and		
Bureau of Commercial Services, Petitioner	Docket No.	2008-1554
v	Agency No.	308814
Gilbert Building Company Arnold H. Gilbert, Q.O., Respondent	Agency:	Bureau of Commercial Services
	Case Type:	Sanction

Issued and entered
this 20th day of February, 2009
by David Cohen
Administrative Law Judge

HEARING REPORT

PROCEDURAL HISTORY

These matters commenced with the issuing of Formal Complaints (Complaints) dated August 26, 2008 by the Department of Labor and Economic Growth¹, Bureau of Commercial Services (Petitioner) against Gilbert Building Company, Arnold Gilbert, Qualifying Officer, and Arnold Gilbert individually (Respondents), alleging one or more violations of the Occupational Code (Code), 1980 PA 299, as amended, MCL

339.101, et seq. and the administrative rules promulgated thereunder. Notices of Hearing (Notices) was issued scheduling contested case hearings at 9:00 a.m. on January 21, 2009 at the State Office of Administrative Hearings & Rules, Cadillac Place, 2nd Floor Annex, Suite 2-700, Detroit, Michigan. The notices were properly sent to Respondent's last known address of record and all other addresses on file for the company and/or qualifying officer. Neither Respondents nor an attorney on behalf of Respondents appeared at the hearing. Administrative Law Judge David M. Cohen presided. Katherine Kakish, Assistant Attorney General, appeared on behalf of Petitioner.

At the onset of the initial proceeding, Attorney Kakish motioned to consolidate both matters solely for hearing purposes, and said Motion was granted.

The hearing proceeded in Respondent's absence pursuant to Section 72 of the Administrative Procedures Act of 1969 (APA), 1969 PA 306, as amended, MCL 24.201 *et seq.*, and a default was granted on behalf of Petitioner pursuant to Section 78 of the APA.

§ 72(1) of the APA provides, in pertinent part:

If a party fails to appear in a contested case after proper service of notice, the agency, if no adjournment is granted, may proceed with the hearing and make its decision in the absence of the party.

§ 78(2) of the APA provides, in pertinent part:

Except as otherwise provided by law, disposition may be made of a contested case by stipulation, agreed settlement, consent order, waiver, default or other method agreed upon by the parties.

As a result of the default, the factual allegations contained in Petitioner's Formal Complaints were deemed proven.

EXHIBITS

The following seven exhibits were admitted into the record at Petitioner's request:

<u>Exhibit</u>	<u>Description</u>
1	Verification of License Status and Proof of Address regarding Respondents
2	Proof of Service (Dated September 4, 2008)
3	Correspondences from Petitioner to Respondent returned undelivered
4	Circuit Court Complaint (Case #07-081095-CH)
5	Consent Judgment in the amount of \$4,000.00 (Case #07-081095-CH)
6	Photostat of check to Renaissance Sheet Metal & Siding Inc. (\$4,000.00)
7	Litigation Cost Report (\$1,312.50)

ISSUES AND APPLICABLE LAW

The specific issue in this case is whether Respondents violated Sections 2411(2)(c), 2411(2)(l) and 2411(3) of the Occupational Code, 1980 PA 299; as amended; MCL 339.2411(2)(c), MCL 339.2411(2)(l) and MCL 339.2411(3), which provides in pertinent part:

Section. 2411. (2) A licensee or applicant who commits 1 or more of the following shall be subject to the penalties set forth in article 6:

(c) Failure to account for or remit money coming into the person's possession which belongs to others.

(l) Becoming insolvent, filing a bankruptcy action, becoming subject to a receivership, assigning for the benefit of creditors, failing to satisfy judgments or liens, or failing to pay an obligation as it becomes due in the ordinary course of business.

Section 2411. (3) The department shall suspend or revoke the license of a person licensed under this article whose

failure to pay a lien claimant results in a payment being made from the homeowner construction lien recovery fund pursuant to the construction lien act, 1980 PA 497, MCL 570.1101 to 570.1305, regardless of whether the person was performing services as a licensee under this article; under the electrical administrative act, 1956 PA 217, MCL 338.881 to 338.892; or under 1929 PA 266, MCL 338.901 to 338.917. The department shall not renew a license or issue a new license until the licensee has repaid in full to the fund the amount paid out plus the costs of litigation and interest at the rate set by section 6013 of the revised judicature act of 1961, 1961 PA 236, MCL 600.6013.

FINDINGS OF FACT

Based on the record, the following findings of fact are established:

1. Respondent, Gilbert Building Company, has, at all times relevant to these Complaints, been licensed as a residential builder under Occupational Code, 1980 PA 299 as amended, Article 24; MCL 339.2401-2412, or was seeking renewal of such license, except as to those events which occurred after May 31, 2008, at which time the license lapsed.
2. Respondent, Arnold H. Gilbert, was not licensed at any time relevant to these Complaints as a residential builder under Occupational Code, 1980 PA 299 as amended, Article 24; MCL 339.2401-2412, the license having lapsed May 31, 2003.
3. On September 28, 2007, as a result of Respondents' failure to pay lien claimant, Renaissance Sheet Metal & Siding, Inc., payment was made on a consent judgment entered against the Homeowner Construction Lien Recovery Fund (HCLRF) in favor of Renaissance Sheet Metal & Siding, Inc. in the amount of \$4,000.00 (Exhibits 5 & 6).
4. The HCLRF incurred litigation costs in the amount of \$1,312.50 (Exhibit 7).
5. The facts underlying the payment arose out of and in connection with the performance of Respondents' duties as licensed residential builders and/or residential maintenance and alteration contractors.
6. Respondents, failed to remit money, which belonged to David & Nancy Levin to Renaissance Sheet Metal & Siding Inc, contrary to MCL 339.2411(2)(c).

7. Respondents, failed to satisfy a lien filed on April 17, 2006 by Renaissance Sheet Metal & Siding, Inc., contrary to MCL 339.2411(2)(l) (Exhibit 4).
8. Respondent Arnold H. Gilbert was a party to the above-referenced acts and omissions and was in a position to ensure compliance with the Occupational Code but failed to do so.

CONCLUSIONS OF LAW

The principles that govern judicial proceedings also apply to administrative hearings. *The burden of proof is upon Petitioner to prove, by a preponderance of the evidence that grounds exist for the imposition of sanctions upon Respondents. 1990 AACRS, R 339.1763. Under § 72 of the APA, there is no requirement to provide a full evidentiary hearing when all alleged facts are taken as true. Smith v Lansing School Dist, 428 Mich. 248 (1987).*

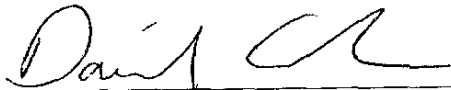
Based upon the facts described herein, Petitioner has proven, by a preponderance of the evidence, that Respondents violated MCL 339.2411(2)(c), MCL 339.2411(2)(l) and MCL 339.2411(3).

Petitioner recommended that restitution be made in the amount of \$5,312.50 plus interest. The \$5,312.50 amount reflects the \$4,000.00 payment from the Homeowner Construction Lien Recovery Fund and the \$1,312.50 incurred as a result of the underlying Circuit Court Litigation. Petitioner additionally recommended a civil fine in an amount deemed reasonable by the board. Both Respondents currently have lapsed licenses with the state, and Petitioner noted the requirement under the Code that these licenses be formally revoked until all restitution and fines in this matter are satisfied.

RECOMMENDATIONS

The Administrative Law Judge makes the following recommendations to the Board:

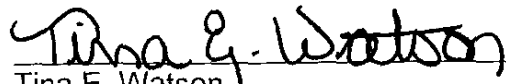
1. Respondents pay a civil fine in an amount to be determined by the Board.
2. Respondents pay restitution to the HCLRF in the amount of \$5,312.50 which includes litigation cost of (\$1,312.50).
3. Respondents' licenses, pursuant to MCL 339.2411(3), should be revoked until the civil fine and restitution have been paid.



David Cohen
Administrative Law Judge

PROOF OF SERVICE

I hereby state, to the best of my knowledge, information and belief, that a copy of the foregoing document was served upon all parties and/or attorneys of record in this matter by Inter-Departmental mail to those parties employed by the State of Michigan and by UPS/Next Day Air, facsimile, and/or by mailing same to them via first class mail and/or certified mail, return receipt requested, at their respective addresses as disclosed by the file on the 20th day of February, 2009.


Tina E. Watson
State Office of Administrative Hearings and Rules

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